

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAMES C. WALTERS,  
ALLAN W. ROSENBALM, and  
CRAIG A. RICHARDSON

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Appeal No. 98-1291  
Application 08/586,524<sup>1</sup>

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ON BRIEF

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Before CALVERT, Administrative Patent Judge, McCANDLISH,  
Senior Administrative Patent Judge, and ABRAMS, Administrative  
Patent Judge.

ABRAMS, Administrative Patent Judge.

**DECISION ON APPEAL**

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<sup>1</sup>Application for patent filed January 16, 1996.

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This is an appeal from the decision of the examiner finally rejecting claims 1, 2, 4-6 and 12. Claim 7 has been canceled. Claims 9-11 and 13-21 have been allowed, and claims 3 and 8 have been indicated as containing allowable subject matter.<sup>2</sup>

The appellants' invention is directed to a trailer for transporting a two-wheeled implement. The subject matter before us on appeal is illustrated by reference to claim 1, which has been reproduced in an appendix to the Brief.

#### **THE REFERENCES**

The references relied upon by the examiner to support the final rejection are:

Chereda	4,032,167	Jun. 28, 1977
Koch	4,607,996	Aug. 26, 1986

#### **THE REJECTIONS**

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<sup>2</sup>The examiner has withdrawn the rejection of claim 3 in the Answer.

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Claims 1 and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Koch.<sup>3</sup>

Claims 6 and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Koch in view of Chereda.

Claims 2 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Koch.<sup>4</sup>

The rejections are explained in the Examiner's Answer.

The arguments of the appellants in opposition to the Examiner's positions are set forth in the Brief and the Reply Brief.

### **OPINION**

In reaching our decision on the issues raised in this appeal, we have carefully assessed the claims, the prior art applied against the claims, and the respective views of the

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<sup>3</sup>In the final rejection (Paper No. 5), the examiner rejected claims 1-5 as being anticipated by Koch. In view of the appellants' arguments in the Brief, this rejection now stands applied only to claims 1 and 5, with claim 3 being indicated as allowable and a new rejection being entered with regard to claims 2 and 4 (Answer, pages 3 and 4).

<sup>4</sup>This is a new rejection, set forth for the first time in the Answer.

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examiner and the appellants as set forth in the Answer and the Briefs.

*The Rejection Under 35 U.S.C. § 102(b)*

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. *See RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), *cert. dismissed sub nom.*, *Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984).

The examiner finds all of the structure recited in independent claim 1 in the transport trailer disclosed by Koch. We agree with the appellants that such is not the case. This reference suffers from several shortcomings. First, in our opinion, the requirement that the pivot axis of the ramps be "spaced toward said second side of said main frame" (emphasis added) should, in view of the appellants' specification, be interpreted to exclude the situation where it is spaced beyond or outwardly of the second side of the main frame, as is the case in Koch (see Figure 5). Therefore, Koch does not disclose or teach this limitation. In addition, claim 1 requires that the first end portion of each of the

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ramps be movable to a raised transport position "wherein said first end portion extends approximately horizontally above and at least in close proximity to said first frame member." That is not the case with the Koch trailer, in which the first end portion of the ramp is clearly at about a 45 degree upward inclination when in the transport position (Figure 5, broken lines), and is in close proximity with the second frame member rather than the first. Finally, claim 1 requires that the ramps be "adapted for being moved . . . by the weight of an implement being loaded . . . as they travel from the second end portions to the first end portions of said ramps," whereas in the Koch system it is the force of the implement wheels contacting the end plate 42 well after they leave the ramps that causes the ramps to be lifted to the transport position.

Since all of the structure recited in claim 1 is not disclosed or taught by Koch, the Section 102 rejection of claim 1 cannot be sustained. It follows that the anticipatory rejection of dependent claim 5 also must fall.

*The Rejections Under 35 U.S.C. § 103*

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill

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in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a *prima facie* case of obviousness under 35 U.S.C. § 103, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), *cert. denied*, 488 U.S. 825 (1988). Claim 6, which depends from claim 1, stands rejected as being unpatentable over the combined teachings of Koch and Chereda. We have pointed out above the shortcomings in Koch with regard to the subject matter recited in claim 1. Claim 6 adds to claim 1 the requirement that there be a horizontal elongate second frame member at a location approximately midway between opposite ends of the first frame member, and that the second wheel

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means be mounted at locations adjacent the two ends of the second frame member. The examiner finds these additional structural elements to be taught by Chereda. However, be that as it may, Chereda fails to alleviate the deficiencies in the primary reference, even when considering it in the light of the Section 103 rejection, and therefore the references fail to establish a *prima facie* case of obviousness with regard to the subject matter of claim 6, and the rejection is not sustainable.

Independent claim 12 has been rejected on the same basis. Claim 12 requires, *inter alia*, that the location of the ramps so relate to a horizontal axis established by the wheel means as to cause the vertical pivot point of the implement swing tongue, when the implement is loaded on the trailer, to be "in substantial vertical alignment" with this horizontal axis. The examiner recognizes that this clearly is not the case in Koch (see Figure 1), but takes the position that it would have been obvious to relocate it to improve the load distribution. This is pure conjecture. No evidence has been provided and no support is found in either reference. It is significant that Koch discloses a single trailer axle that is off center, in

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which stability during loading is provided by a support and during transport by the attachment of the trailer directly to the towing vehicle by a drawbar (column 4, lines 8-15). In the appellants' system, in contrast, two axles are provided and the loaded trailer is pulled by means of the swing arm of the loaded implement. We fail to perceive any teaching, suggestion or incentive which would have led one of ordinary skill in the art to make such a modification except for the hindsight accorded one who first viewed the appellants' disclosure. This, of course, cannot be the basis for a finding of obviousness. See, for example, *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Finally, as was the case in claim 1, claim 12 requires that the ramps move from the loading positions to the transport positions "in response to implement weight moving up said ramps . . . with the ramps depositing said implement at said respective transport locations . . . when the ramps reach their respective transport positions." This is not disclosed or taught by Koch or Chereda.

The combined teachings of these two references fail to establish a *prima facie* case of obviousness with regard to the



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subject matter of claim 12, and this rejection is not sustained.

Claims 2 and 4 stand rejected as being unpatentable over Koch, alone. These claims add parking stands and details thereof to claim 1. As we determined above, Koch fails to disclose all the subject matter of claim 1, and in our view this conclusion is not altered by considering Koch in the light of Section 103. We therefore will not sustain this rejection.

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**SUMMARY**

None of the rejections are sustained.

The decision of the examiner is reversed.

**REVERSED**

	Ian A. Calvert	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	Harrison E. McCandlish, Senior	)	BOARD OF
PATENT	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
		)	
	Neal E. Abrams	)	
	Administrative Patent Judge	)	

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